

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27629

**FILE:** B-213245.2

**DATE:** March 7, 1984

**MATTER OF:** Reliable Elevator Corp.

**DIGEST:**

1. Agency's rejection of the low aggregate bid due to the omission of item prices, and award to the only other bidder at a higher aggregate price, was improper. The low bid was responsive and should have been accepted for award, since (1) the bid was tantamount to an all or none bid; (2) the IFB did not prohibit all or none bidding; and (3) the bid would result in the lowest cost to the government.
2. An IFB requirement for unit prices (in addition to an aggregate price), which prices were intended to permit evaluation for multiple award purposes, was not mandatory since the IFB permitted all or none bidding and unit prices would be irrelevant to the evaluation of an all or none bid.

Reliable Elevator Corp. protests the rejection of its bid and the award of a contract to Tillipman Elevator Co., Inc. under invitation for bids (IFB) No. 665-3-84, issued by the Veterans Administration (VA) for elevator maintenance services. Reliable's bid was rejected as nonresponsive because it set forth only an aggregate bid price, omitting unit prices for maintenance of each of the 20 elevators comprising the requirement. We sustain the protest.

The solicitation sought bids for a 1-year contract with two 1-year options. The bid schedule stated that "bids shall be submitted on the basis of lump sum per month," and also included the following provisions:

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"Aggregate Awards: It is contemplated that items one (1) through twenty (20) will be awarded to the responsible bidder quoting the lowest aggregate price for all items. In the event an aggregate bid is not received for all items, the VA reserves the right to award on either an item basis or the lowest responsible bidder quoting the lowest aggregate price on not less than 50% of the items in the group, whichever is most advantageous to the Government.

"Bids will be evaluated on the basis of additional cost to the Government that might result from making multiple awards. For this purpose, the cost of awarding and administering each additional contract is estimated to be \$500. Multiple awards will not be made unless there is a resulting savings of more than \$500. BIDDERS MUST QUOTE UNIT PRICE ON EACH ITEM OFFERED . . . ." (Emphasis in original.)

Three of the five bids received were rejected as nonresponsive because they were not accompanied by a required bid bond. Reliable's bid also was rejected. Reliable offered a \$7,925 lump sum monthly price (\$95,100 for 12 months) covering all 20 items, but did not provide a unit price for each item. Since the VA considered the unit price requirement material, it rejected Reliable's bid as nonresponsive. Tillipman thus was deemed the only responsive bidder and was awarded a contract for all 20 items. This award was based not on Tillipman's unit prices but on its \$8,769 lump sum price (\$105,228 for 12 months), even though this price was higher than Reliable's lump sum bid.

In offering only a single lump sum price for performing the maintenance on all 20 elevators covered by the IFB, Reliable in effect submitted an "all or none" bid. That is, Reliable was offering to perform only if it received a contract covering all 20 items. Cf. Robert Gray Construction Company, B-184316, August 25, 1975, 75-2 CPD 124 (aggregate bid price together with insertion of "no bid" for unit prices is tantamount to all or none bid). All

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or none bids are responsive, and must be considered for award, unless such bids clearly are prohibited by the solicitation. See Federal Procurement Regulations § 1-2.404-5; Tridair Helicopters, B-206681, August 10, 1982, 82-2 CPD 123. The failure to make award to an all or none bidder submitting the bid which would result in the lowest overall cost to the government constitutes a violation of 41 U.S.C. § 253(b) (1976), which requires that award be made to that bidder whose bid is most advantageous to the government, price and other factors considered. See Canova Moving and Storage Company, B-207168, January 18, 1983, 83-1 CPD 59.

The IFB here contained no express prohibition of all or none bidding. Since the unit prices would not be relevant to the evaluation of an all or none bid, Reliable's omission of those prices from its bid, in our opinion, was of no consequence. We thus reject the argument raised by VA that the unit price requirement was mandatory because it was intended to enable the government to determine whether multiple awards would result in an overall lower cost. An all or none bid that is lower than any other bid or combination of bids that the government could accept represents the lowest cost to the government and should be accepted for award. See Tridair Helicopters, supra; Suburban Industrial Maintenance Company, B-187996, March 23, 1977, 77-1 CPD 206.

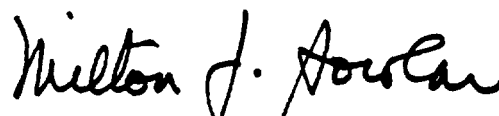
We also reject VA's argument that award to Reliable would be "unfair" to Tillipman, which would be deprived of its rights to be considered for item awards. Bidders, including Tillipman, had no "right" to be considered for item awards. The IFB provided that multiple awards based on item prices would be made only if "an aggregate bid is not received for all items." Although unartfully phrased, we assume VA meant by that provision that it would consider multiple awards only if the government's overall cost under that option would be lower than for an aggregate award. VA did not receive bids offering lower unit prices, so it was required to award to the lowest responsive aggregate bidder. Since Reliable's low bid was responsive, Reliable was entitled to the award. We fail to see how an award in accordance with the IFB could be considered unfair or otherwise prejudicial to Tillipman.

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In view of our conclusion, we recommend that VA determine whether Reliable is a responsible bidder and, if so, that it terminate Tillipman's contract for convenience and award Reliable a contract for this requirement. By letter of today, we are advising the Administrator of our findings and recommendation.

The protest is sustained.

This decision contains a recommendation that corrective action be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720, as adopted by Public Law 97-258 (formerly 31 U.S.C. § 1176 (1976)), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.

*for*   
Comptroller General  
of the United States